STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 24, 2011

In the Matter of G. M. SLOAN, a/k/a G. M. KINNEY, Minor.

No. 299795
Branch Circuit Court
Family Division
LC No. 08-003889-NA

Before: GLEICHER, P.J., and WHITBECK and OWENS, JJ.

PER CURIAM.

Respondent appeals by right the trial court order terminating her parental rights to the minor child under MCL 712A.19b(3)(i). We affirm.

First, respondent contends that the trial court committed clear error in finding that the minor child came within the jurisdiction of the court. We disagree. Although the court's lack of subject matter jurisdiction may be attacked at any time, its exercise of jurisdiction may only be challenged on a direct appeal from the original order of disposition. *In re Gazella*, 264 Mich App 668, 679-680; 692 NW2d 708 (2005). Here, respondent attacks the court's exercise of its jurisdiction. Such a challenge must fail as a matter of law. Nonetheless, we will briefly address respondent's argument regarding the court's exercise of jurisdiction.

This Court reviews the trial court's decision to exercise jurisdiction for clear error in light of the court's findings of fact. *In re BZ*, 264 Mich App 286, 295; 690 NW2d 505 (2004). "To properly exercise jurisdiction, the trial court must find that a statutory basis for jurisdiction exists." *Id.* "Jurisdiction must be established by a preponderance of the evidence." *Id.*

Respondent argues that under MCL 712A.2(b), petitioner must demonstrate present neglect or a present substantial risk of harm. However, by application of the doctrine of anticipatory neglect, a child may come within the jurisdiction of the court solely on the basis of a parent's treatment of another child. Present neglect of the child who is the subject of the petition is not a prerequisite for jurisdiction of that child. *Gazella*, 264 Mich App at 680,681.

The minor child was removed from respondent's care when he was two days old. Respondent had lost her parental rights to her four older children just four months before the birth of this child. She admitted that she consumed alcohol during the early stages of this pregnancy. Respondent had known her current boyfriend for about eight months and had been living in his home for seven months. She relied on him for financial and emotional support. He was not the child's biological father. She had no employment and a long history of alcoholism.

The court agreed that the prior terminations, in and of themselves, were not sufficient for the court to acquire jurisdiction. However, the court found that the prior terminations were "just a short time ago" and, given her long history of alcoholism, respondent had not had sufficient time to demonstrate sobriety. The court noted that respondent had consumed alcohol while pregnant with the minor child. In addition, the court did not have sufficient information concerning the new boyfriend and respondent had a history of numerous relationships with inappropriate men. Further, because the court had also presided in the prior terminations, the court had heard respondent make the same "well-intentioned" statements before. Thus, the court found that these circumstances rose to the level where it had jurisdiction in this matter.

We find the preponderance of the evidence demonstrated that there was a risk of harm to the minor child if he were placed in respondent's custody. We find that the facts enumerated by the court were supported by the record and sufficient to establish the required risk of harm to the minor child. The trial court did not clearly err in assuming jurisdiction.

Next, respondent contends that the trial court clearly erred in finding that it was in the child's best interests to terminate her parental rights. We disagree. Once the petitioner has established a statutory ground for termination by clear and convincing evidence, the trial court must find that termination is in the child's best interests before it can order termination of parental rights. MCL 712A.19b(5). The trial court's decision regarding the child's best interests is reviewed for clear error. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-367; 612 NW2d 407 (2000).

The court correctly found that a statutory ground for termination of parental rights was established under MCL 712A.19b(3)(i), and respondent does not argue otherwise. One statutory ground for termination under MCL 712A.19b(3), established by clear and convincing evidence, is sufficient to support termination of parental rights. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). The court was then required to determine whether termination of respondent's parental rights was in the best interests of the minor child. MCL 712A.19b(5).

The court found that determining the best interests of the child was a difficult decision. We agree that the decision was difficult. By the termination hearing, respondent appeared to have turned her life around, obtaining her own housing and some income from a part-time job, being involved in a stable relationship, no longer associating with her former drinking crowd, and remaining alcohol free for several months. The child was just seven months old. He was familiar with respondent because she had visited with him twice a week almost every week since his birth, the visits went well, respondent was appropriate and affectionate with him, and all evidence showed that the child was quite comfortable with her. The court had to decide whether removal from the foster home and the child's siblings who also lived there and placement with respondent would cause a severe trauma in the child's life.[1] The court found it would. The court

[1] "While it is inappropriate for a court to consider the advantages of a foster home in deciding whether a statutory ground for termination has been established, such considerations are appropriate in a best-interests determination." *In re Foster*, 285 Mich App 630, 635; 776 NW2d 415 (2009).

held that it did not want to "cause the trauma that comes from disrupting the only parents that little one has known." We cannot find that the court clearly erred in finding that termination of respondent's parental rights would be in the child's best interests, MCR 3.977(K); *Trejo*, 462 Mich at 356-357, and therefore affirm the trial court's order.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ William C. Whitbeck
/s/ Donald S. Owens